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9 *of Nevada ex rel. Board of Regents of*
10 *the Nevada System of Higher Education,*
on behalf of the University of Nevada,
Las Vegas and Vernon Hodge

11
12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE DISTRICT OF NEVADA**

14 SUJANIE V.S.V. GAMAGE aka SUJANIE
15 GAMAGE SAMARASEK,

16 Plaintiff,

17 vs.

18 THE STATE OF NEVADA ex rel. BOARD
19 OF REGENTS OF THE NEVADA
SYSTEM OF HIGHER EDUCATION, on
20 behalf of THE UNIVERSITY OF
NEVADA, LAS VEGAS; a Political
21 Subdivision of the State of Nevada;
VERNON HODGE, individually and in his
22 official capacity as an employee of the
University of Nevada, Las Vegas; and DOES
23 I-XX inclusive,

24 Defendants.

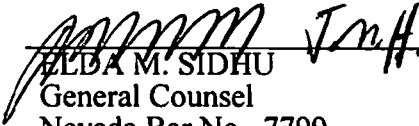
CASE NO.: 2:12-cv-00290-GMN-VCF

**DEFENDANTS' MOTION FOR
JUDGMENT ON THE PLEADINGS**

25 Defendants, The State of Nevada ex rel., its Board of Regents of the Nevada System of
26 Higher Education, on behalf of the University of Nevada, Las Vegas ("UNLV") and Vernon
27 Hodge, individually and in his official capacity ("Hodge" and collectively "Defendants") by and
28 through counsel, Elda M. Sidhu, General Counsel, University of Nevada, Las Vegas, and J. Marty

Howard, Assistant General Counsel, University of Nevada, Las Vegas, hereby submit their Motion for Judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c).

DATED this 30th day of April, 2012.


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I.

FACTS

This is a case which Defendants removed from state court. (CR 1). Plaintiff in her complaint alleges she is a student at UNLV and was falsely accused of plagiarizing by her Professor, Defendant Hodge. Plaintiff alleges she subsequently was provided a due process hearing before the Academic Integrity Appeal Panel where it was recommended she be removed from the Chemistry Ph.D. program. She alleges her U.S. Constitutional Rights have been violated. Specifically, Plaintiff alleges in the Sixth Cause of Action her "Civil Rights" have been violated pursuant to the 5th and 14th Amendments to the United States Constitution. Plaintiff has alleged various other state causes of action. Defendants filed an answer on April 20, 2012. (CR 13).

Plaintiff's complaint is critically defective pertaining to the alleged violation of her United States Constitutional Rights. The complaint does not even contain a casual reference to 42 U.S.C.

1 Section 1983 which is the only vehicle for bringing federal civil rights causes of action against the
2 State of Nevada and/or state employees.

3 Plaintiff should be ordered to file an amended complaint which properly alleges 42 U.S.C.
4 Section 1983 or face dismissal of her federal causes of action in this matter.

5 II.

6 **STANDARD-MOTION FOR JUDGMENT ON THE PLEADINGS**

7 A district court will grant a motion for judgment on the pleadings under FED. R. CIV. P.
8 12(c) if the initial complaint fails to state a claim under Rule 12(b)(6). *Enron Oil Trading &*
9 *Transp. Co. v. Walbrook Ins. Co., Ltd.*, 132 F.3d 526, 529 (9th Cir. 1997). Pursuant to Rule
10 12(b)(6), a complaint may be dismissed which fails to state a claim upon which relief can be
11 granted. A Court may render judgment on the pleadings when the pleadings exhibit no issue of
12 material fact to resolve, and the moving party is entitled to judgment as a matter of law. *Enron*,
13 132 F.3d at 529.

14 III.

15 **ARGUMENT**

16 42 U.S.C. §1983 states in relevant part:

17 “Every person who, under color of any statute, ordinance,
18 regulation, custom, or usage, of any State or Territory or the
19 District of Columbia, subjects, or causes to be subjected, any
20 citizen of the United States or other person within the jurisdiction
21 thereof to the deprivation of any rights, privileges, or immunities
22 secured by the Constitution and laws, shall be liable to the party
23 injured in an action at law, suit in equity, or other proper
24 proceeding for redress...”

25 **Functional Role of § 1983**

26 The essence of 42 U.S.C. Section 1983 is to authorize a court to grant relief when a party’s
27 federally protected rights have been violated by a state official who acted under color of state law.
28 This section fulfills the procedural or remedial role of authorizing the assertion of a claim for
relief. The statute itself does not create or establish substantive rights. “The pleader must also
allege an independent substantive basis for his claim, whether grounded in a federal constitutional
or statutory right.” (emphasis added). *Nabozny v. NCS Pearson, Inc.*, 270 F. Supp. 2d 1201, 1204-

1 1205 (D. Nev. 2003). 42 U.S.C. Section 1983 creates a “cause of action” against those, who
 2 acting pursuant to state government authority, violate federal law. *Rivera v. Aqueduct and Sewer*
 3 *Authority of Puerto Rico*, 472 F. Supp. 2d 165, 168 (D. P.R. 2007); *Scott v. Estes*, 60 F. Supp. 2d
 4 1260, 1268 (D. M.D. Ala 1999).

5 “Plaintiff has no cause of action directly under the United States Constitution. We have
 6 previously held that a litigant complaining of a violation of a constitutional right must utilize 42
 7 U.S.C. Section 1983.” *Azul-Pacifico, Inc. v. City of Los Angeles*, 973 F.2d 704, 705 (9th Cir.
 8 1992), *cert. denied*, 506 U.S. 1081 (1993).

9 “Section 1983 does not itself create or establish any federally protected right. Instead, it
 10 creates a cause of action for plaintiffs to enforce federal rights created elsewhere—federal rights
 11 created by the federal Constitution or, in some cases, by other federal statutes.¹ [DOCUMENT
 12 QUOTE FOOTNOTE 25] In other words, § 1983 fulfills the procedural or remedial function of
 13 authorizing plaintiffs to assert a claim for relief against a defendant who, acting under color of
 14 state law, violated the plaintiffs’ federal rights. In addition, § 1983 provides the exclusive
 15 available federal remedy for violations of federal constitutional rights under color of state law.
 16 **Thus, plaintiffs may not avoid the limitations of a § 1983 claim for relief by asserting a claim**
 17 **directly under the Constitution.”²** (emphasis added). MARTIN A. SCHWARTZ & KATHRYN
 18 R. URBONA, SECTION 1983 LITIGATION- FEDERAL JUDICIAL CENTER 7-8 (2d ed. 2008).
 19 [DOCUMENT QUOTE FOOTNOTE 26].

21 _____
 22 ¹ [[DOCUMENT QUOTE FOOTNOTE 25] *Albright v. Oliver*, 510 U.S. 266, 271 (1994);
 23 *Graham v. Connor*, 490 U.S. 386, 393–94 (1989); *City of Oklahoma City v. Tuttle*, 471 U.S. 808,
 24 816 (1985); *Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 608 (1979) (§ 1983 “creates
 no substantive rights; it merely provides remedies for deprivations of rights established
 elsewhere”); *Baker v. McCollan*, 443 U.S. 137, 140, 144 n.3 (1979).

25 ² [DOCUMENT QUOTE FOOTNOTE 26] *Jett v. Dallas Indep. Sch. Dist.*, 491 U.S. 701,
 26 735 (1989); *Wax 'n Works v. City of St. Paul*, 213 F.3d 1016, 1019 (8th Cir. 2000); *Baxter v. Vigo*
 27 *County Sch. Corp.*, 26 F.3d 728, 732 n.3 (7th Cir. 1994); *Azul-Pacifico, Inc. v. City of Los Angeles*,
 28 973 F.2d 704, 705 (9th Cir. 1992), *cert. denied*, 506 U.S. 1081 (1993); *Santiago v. N.Y. State Dep't*
of Corr. Servs., 945 F.2d 25, 30–31 (2d Cir. 1991); *Tarpley v. Greene*, 684 F.2d 1, 9–11 (D.C. Circ.
 1982); *Pauk v. Bd. Of Trustees of City Univ. of New York*, 654 F.2d 856, 865 (2d Cir. 1981).

IV.


CONCLUSION

Plaintiff in this action is suing the State of Nevada and a state employee, Professor Hodge, in both his individual and official capacity. Plaintiff is alleging a violation of civil rights pursuant to the U.S. Constitution. Therefore, Plaintiff's complaint must contain a cause of action which is brought pursuant to 42 U.S.C. Section 1983. Defendants are aware Plaintiff should freely be given leave to amend her complaint when justice so requires. FED. R. CIV. P. 15(a)(2).

This is not an academic exercise. A cause of action pursuant to 42 U.S.C. 1983 is required by well established case law. More importantly, Defendants are entitled to a fair opportunity to allege and defend this case based upon the wealth of cases interpreting and defining 42 U.S.C. Section 1983 litigation. This would include, but not be limited to, important defenses such as the official capacity doctrine set forth in *Will v. Michigan, Dept of State Police*, 491 U.S. 58, 66 (1989); qualified good faith immunity from damages; the eleventh amendment, etc.

Plaintiff's complaint fails to state a claim upon which relief can be granted. Plaintiff cannot eviscerate Defendants ability to raise proper defenses in this case simply by failing to properly allege 42 U.S.C. Section 1983 as a cause of action.

DATED: April 30th 2012.


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CERTIFICATE OF SERVICE

I certify that on this date, April 30, 2012, I served the following **DEFENDANTS'**
MOTION FOR SUMMARY JUDGMENT ON PLEADINGS via electronic service on the date
and to the address(es) shown below:

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